due to the need to verify the facts in the conduct of the proceedings known only to Mr. Cheah and the respondents. It was also the contention of the petitioners that the two bills of costs for the sum of $40,540.75 and $11,768.00 respectively were "oppressively" excessive and it was wrong for the respondents who were holding the sum of $600,000.00 in trust for and on behalf of the beneficiaries to deduct their costs out of the trust fund without the said costs being taxed.

Mr. Ng, in reply had contended that the Petitioners have not shown "special circumstances." In his affidavit (Encl. 5) he deposed that the two bills of costs were sent to the Singapore solicitors on September 7, 1983. On September 14, 1983 the Singapore solicitors informed his firm that they wanted the costs to be taxed. He contended that as the two bills were submitted and forwarded to Shearn Delamore & Company there was no need for verification. They were required only to go through the bills and to mark the items as either 'P' or 'Q'. On the question of petitioners' allegation that some of the amount in the bills had been settled out of the common fund, Mr. Ng in his submission stated that this matter could be agreed between parties. As such, it was his case that the petitioners had failed to show "special circumstances."

In my judgment, I accept that there was a need for the petitioners' solicitors at that point of time to verify certain items and documents from Mr. Cheah Inn Khean. I also take into account that a substantial sum is claimed by the respondents as their costs and of a tacit admission by Mr. Ng that certain sums of money had already been paid out of the common fund. In the circumstances, this is a proper case where I should exercise the inherent jurisdiction of the Court by ordering taxation of both bills of costs because justice requires that such an order should be made, notwithstanding that the petitioners' solicitors had allowed the twelve-month period to elapse without making this application.

Therefore, I make this order in terms of the application and that these two bills of costs be set down for taxing by the Registrar to a date to be fixed. I also order that the costs of and incidental to this application be paid by the petitioners to the respondents in any event.

Order accordingly.

Solicitors: *Shearn Delamore & Co.; Hassan & Kong Yeam.*

K. RAMASEN v. MINISTER OF EDUCATION, MALAYSIA & ANOR.

[O.C.J. (Siti Norma Yaakob J.) July 1, 1986]

[Kuala Lumpur – Civil Suit No. P473 of 1980]

Administrative Law – Dismissal of teacher – Disciplinary action for participating in general elections – Whether dismissal mala fide – Education Act, 1961, s. 92 – Central Board (Conduct and Discipline) Regulations, 1977, regulation 20(4).

Teacher – Dismissal – Disciplinary action for participating in general elections – Whether dismissal mala fide.

In February 1961, the plaintiff was employed as a teacher at the High School Klang by the Board of Governors of that school. In the May 1961 general elections, whilst he was so employed, he stood for election as a candidate of the Democratic Action Party (hereafter abbreviated as DAP). However, prior to Nomination Day, he notified the Permanent Secretary of the Ministry of Education, through the Headmaster of his school, of his intention to contest in the general elections. In response to this, his Headmaster wrote him a letter dated April 16, 1969 asking him to tender his resignation but the plaintiff refused. The plaintiff won the election and served his full term as a State Assemblyman at the same time continuing to teach at the High School. No disciplinary action was taken against him.

In 1972, following the recommendation of the Royal Commission on Teaching Services in West Malaysia, teachers under the UTSR were granted options to either remain under UTSR as non-government servants or to become government servants. The plaintiff opted to remain under UTSR and from April 1, 1972, he was a non-government servant and an employee of the second defendant.

In 1974 and 1978 the plaintiff stood for elections whilst he was a teacher. After the election, the second defendant requested for his resignation. The plaintiff refused but no disciplinary action was taken against him.

By a circular 1/78 the plaintiff was offered by the second defendant an option of being placed under the revised salary scale and on a pensionable scheme and he accepted.

On December 1, 1979 the plaintiff once again stood as a DAP candidate in the by-election.

On January 11, 1980, he received a letter from the second defendant to show cause why he should not be dismissed for having breached Regulation 20(4) of the Central Board (Conduct and Discipline) Regulations 1977 (hereinafter called the 1977 Regulations). The plaintiff replied that the Regulations would have applied had he won the by-election and as that was not the case, he should not be dismissed from his service. On June 1, 1980, after having obtained the approval of the first defendant, the second defendant dismissed the plaintiff.

The plaintiff claimed, *inter alia*, that he was wrongfully dismissed and for consequential reliefs such as reinstatement to his former position as a teacher, arrears of salary and damages.

Held, dismissing the plaintiff's claim: (1) there is no merit to the plaintiff's contention that the 1977 Regulations are null and void as being in excess of a power, that is *ultra vires* section 116(p) of the Education Act 1961;

(2) as far as the plaintiff's participation in the 1969, 1974 and 1978 general elections was concerned, the omission of the second defendant to take any action against him was not due to its reluctance to do as it had, until then, no power to take any disciplinary action against him. To that extent, estoppel cannot work against the defendants for having failed to take any action against the plaintiff for having contested in the general elections;

(3) the plaintiff's evidence of *mala fide* and victimization amounted only to mere allegations which remained uncorroborated;

(4) the plaintiff was very much aware of the restriction imposed in the 1977 Regulations when he contested the 1979 by-election and in so doing, he had deliberately flouted the prohibition which entitled the second defendant to dismiss him.

Cases referred to:

(1) *Laws* v. *London Chronicle (Indicator Newspapers) Ltd.* [1959] 2 All E.R. 285.
(2) *Pepper* v. *Webb* [1969] 1 W.L.R. 514.
(3) *Connell* v. *Giborne Times Co. Ltd.* (1909) 28 N.Z.L.R. 299.
(4) *Adami* v. *Maison Deluxe Limited* (1924) 35 C.L.R. 143.

CIVIL SUIT.

Karpal Singh (*J. Chandran* with him) for the plaintiff.

P.M. Mahalingam (Senior Federal Counsel) for the first defendant.

Y.M. Raja Aziz Addruse for the second defendant.

Cur. Adv. Vult.

Siti Norma Yaakob J.: The facts of this case are not in dispute and they are these which I now set out in the following order.

In February, 1961, the plaintiff was employed as a teacher at the High School Klang by the Board of Governors of that school under the Unified Teaching Services Rules (hereinafter abbreviated as UTSR). In the May 1969 general elections, whilst he was so employed, he stood for election to the Bukit Raja Constituency for the Selangor State Legislative Assembly as a candidate of the Democratic Action Party (hereinafter abbreviated as DAP). However, prior to Nomination Day, he notified the Permanent Secretary of the Ministry of Eduction, through the Headmaster of his school, of his intention to contest in the general elections. The response to this notification came in a letter dated April 16, 1969 from his Headmaster, requesting him to tender his resignation. To this, the plaintiff replied that he saw no reason why he should do so based on the following considerations:

1. As a teacher under the UTSR, he did not come within the prohibitive definition of a "holder of an office of profit."
2. The request to tender his resignation should come from the Board of Governors of the school who was after all his employer.
3. A precedent had already been set by the Headmaster of Pykett Methodist School, Penang who became the Mayor of Penang, at the same time holding the office of the Headmaster of the school.

This reply, AB 63, was extended by his Headmaster to the Chief Education Officer, Selangor, for advice but as the evidence stopped here, in all probability, no advice was forthcoming.

After writing AB 63, the plaintiff also applied to the Chief Education Officer, Selangor, through his Headmaster by AB 64, for no pay leave from April 25, 1969 to May 16, 1969, to enable him to campaign for the general elections and he was duly granted such leave. The plaintiff won the election and he served his full term as a State Assemblyman in the Bukit Raja constituency at the same time continuing to teach at the High School, Klang. No disciplinary action was taken against him.

In 1972, following the recommendations of the Royal Commission on Teaching Services in West Malaysia, teachers under the UTSR were granted options to either remain under UTSR as non-government servants or to become government servants. The plaintiff at AB 5 opted to remain under UTSR and following the winding up of the Board of Governors and Managers, employers of teachers in fully assisted schools, their roles and functions were taken over by the Central Board, the second defendant, a body corporate set up under section 92 of the Education Act 1961 (hereinafter be referred to as "the Act"). The plaintiff, at AB 7, accepted the second defendant's offer of an appointment with it and from April 1, 1972, he was a non-government servant and an employee of the second defendant.

In 1974, whilst he was still a teacher, the plaintiff stood again for election for the Shah Alam

Parlimentary seat and Bukit Raja State Assembly seat on a DAP ticket. Nobody objected to his participation in the general elections and he applied for and was granted no pay leave to campaign but he was unsuccessful in both attempts.

In 1978 whilst he was still a teacher, he again stood for election for the State seat of Bukit Raja and the Port Klang Parliamentary seat, again as a DAP candidate and he was also given no pay leave to campaign but he lost in both seats. However, after the election, the second defendant requested for his resignation but he did not adhere to this request and neither was any disciplinary action taken against him. At about this time, following the revision of a new salary scale under the Cabinet Report on Salaries, the second defendant, through its circular 1/78, offered the plaintiff one of 3 options; first to remain under the same salary scale and be governed by the terms and conditions of his service then in force, secondly to accept the revised salary scale under the circular and be placed on the pensionable scheme and a third option which however was not applicable to him. The plaintiff exercised his option at AB 51–52 by accepting the second of the three options.

Then on December 1, 1979, he was once again the DAP candidate in the by-election for the Parliamentary seat of Port Klang following the demise of its incumbent. He was again unsuccessful and on January 11, 1980, he received a letter, AB 53, from the second defendant to show cause why he should not be dismissed for having breached Regulation 20(4) of the Central Board (Conduct and Discipline) Regulations 1977, (hereinafter to be referred to as "1977 Regulations"). In AB 55, the plaintiff replied that the Regulations would have applied had he won the by-election and as that was not the case, he should not be dismissed from his service. The second defendant, however, did not accept his explanation and on June 1, 1980, after having obtained the approval of the first defendant, dismissed him as a teacher.

Although the present action brought by the plaintiff is principally a claim for wrongful dismissal, he has also pleaded consequential reliefs such as reinstatement to his former position as a teacher, arrears of salary and other benefits since the date of his dismissal and damages for wrongful dismissal. He has also pleaded a number of declaratory prayers namely that the 1977 Regulations is *ultra vires* the provision of section 116 of the Act, that the purported dismissal was *mala fide* as he was victimised for his political beliefs and convictions and that the defendants by their acts of omissions were estopped from taking any disciplinary action against him for having stood in the by-election in 1979.

The defences of both the defendants are identical and they are: (1) as the plaintiff had accepted a new salary scheme offered by the second defendant pursuant to its Circular 1/78, he had agreed to be governed by the General Orders (which are to apply to the plaintiff in relation to his service with the second defendant), the 1977 Regulations, Treasury directives and other relevant circulars. By standing as a candidate in the 1978 general elections and in the 1979 by-election, he had contravened the provisions of the General Orders and the 1977 Regulations prohibiting him from taking part or carrying on political activities; (2) the plaintiff had been guilty of misconduct and insubordination by wilfully disobeying the orders of the second defendant and that he had repudiated his contract of service when he stood for the by-election in December 1979 and (3) the plea of estoppel or waiver does not apply in the circumstances of this case.

The first issue taken by the plaintiff is that the first defendant had no power to make the 1977 Regulations, as such power had been delegated to the second defendant and to that extent, the Minister had acted *ultra vires* by making the 1977 Regulations under section 116(p) of the Act. That being the case, he maintains further that the conditions of his service at the time of his dismissal were not governed by the 1977 Regulations but by an earlier set of rules called the Education (Central Board) (Membership and Functions) Rules 1972 (hereinafter to be referred to as the "1972 Rules"), which have not been repealed by the second defendant and which contains no prohibition requiring him to resign from his post as a teacher if he wishes to seek election to the House of Representatives or to a State Legislative Assembly.

Prior to the amendments of the Act on April 4, 1972, by Act A 111, the employers of teachers in all schools in this country were the Board of Managers for primary schools and the Board of Governors for schools other than primary schools. By incorporating section 26A into the Act, the Boards of Managers and Governors were wound up and in their place, the second defendant was established under section 92 of the Act. Under section 94 of the Act, the second defendant was empowered not only to employ such category of teachers and other employees that may be deter-

mined by the first defendant but was also given exclusive jurisdiction to deploy and discipline them. It was acting under such powers in the Act that the second defendant offered the plaintiff the option to accept an appointment with it and the plaintiff exercised that option in AB 7 by accepting the second defendant as his employer. Thus from April, 1972 and until his dismissal on June 1, 1980, the plaintiff was an employee of the second defendant.

Act A 111 also amended section 166(p) of the Act, empowering the Minister to make rules in respect of the nature, terms of office, conditions of retirement and duties of the members of the second defendant and its employees as the case may be and other matters relevant thereto. It was under section 166(p) of the Act as amended that the first defendant made the 1972 Rules and the 1977 Regulations.

The 1972 Rules came into effect on November 27, 1972 soon after the establishment of the second defendant on April 4, 1972 and unlike the 1977 Regulations, the 1972 Rules generally lays down the composition of the second defendant, the terms and conditions of office of its members, the financial considerations to be made to its members, the conduct of its meetings and proceedings, the powers of the first defendant in relation to the second defendant and the general powers of the second defendant to transact business and to make regulations. In short, the 1972 Rules generally state the composition and the administrative functions of the second defendant but make no reference as to the code of conduct of its employees, the disciplinary procedure that may be taken against them and other general provisions that are amply stated in Parts II – IV of the 1977 Regulations. Thus, the 1972 Rules are to be read together with the 1977 Regulations as they complement each other with the 1972 Rules declaring only the membership and functions of the second defendant, whilst the 1977 Regulations govern the conduct and discipline of its employees.

Having established that, can it be said that the first defendant had exceeded his powers when he made the 1977 Regulations? The explanatory note given to the Bill before Act A III became law states that the purpose of amending section 116(p) was "to empower the Minister to make rules in respect of the nature, terms of office, conditions of retirement and duties of members of the Central Board and its employees as the case may be and other matters relating thereto." As the intention of the Legislature is clearly to empower the Minister to make rules, I do not consider that the first defendant had exceeded his power when he made the 1977 Regulations under section 116(p) of the Act. Act A III did not empower the second defendant to make rules and neither can the first defendant delegate such power to the second defendant. Under section 116(p) of the Act, the first defendant makes the rules, the second defendant carries them out. That being the case, there is therefore no merit to the plaintiff's contention that the 1977 Regulations are null and void as being made in excess of a power that is *ultra vires* section 116(p) of the Act. Admittedly, the Minister had chosen to call them Regulations rather than Rules but I consider the meaning of these two words are synonymous. Irrespective of what such rules are to be labelled as, what I need to ask myself is whether the Minister had the power to make them in the first place and I am satisfied for reasons that I have given above that he had such a power.

As the plaintiff had also relied on the proviso to Rule 5 of the 1972 Rules, I now consider whether the 1972 Rules or the 1977 Regulations govern his terms and conditions of service, particularly those relating to conduct and discipline. Reading the proviso in its entirety it merely states that at the time of employment by the second defendant, the plaintiff can continue to retain the same terms and conditions of service as those existing before he became an employee of the second defendant, the only difference being that as an employee of the second defendant, he is now subject to transfer and to the disciplinary rules of the second defendant. Those disciplinary rules can only mean the 1977 Regulations as they are the only rules that govern the employees of the second defendant and to that extent, the 1977 Regulations apply to the plaintiff insofar as conduct and discipline are concerned. Here I pause to state that whilst he considers the 1977 Regulations were made *ultra vires*, the plaintiff, however, accepts the validity of the 1972 Rules which, like the 1977 Regulations, were also made by the first defendant pursuant to his power under section 116(p) of the Act.

The other issue raised by the plaintiff was that the defendants are estopped from taking any action against him for participating in the 1979 by-election as the second defendant had not disciplined him for taking part in the general elections in 1969, 1974 and 1978. To answer this, let me now look at the conditions prevailing at the time of each general election. In 1979, the second

defendant was not yet in existence and estoppel therefore cannot be evoked against him. In 1974, although the second defendant had already been established, the 1977 Regulations were not enforced. The only rules governing the conduct and discipline of the employees of the second defendant were those found in Parts I – III of its Circular 1/73, AB 66, which the Chairman of the second defendant, D.W.1, admitted was null and void as it was not made by the first defendant in the exercise of his powers under section 116(p) of the Act but by the second defendant itself. Although paragraph 20(4) of AB 66 contains words and meaning similar to those contained in Regulations 20(4) of the 1977 Regulations, under which the plaintiff was dismissed, the second defendant was powerless to act under paragraph 20(4) of AB 66, knowing too well that it was ineffective and that was why no action was taken against the plaintiff when he contested the 1974 general elections and to that extent estoppel cannot apply against the second defendant.

When the plaintiff stood for the 1978 general elections, the 1977 Regulations were already enforced but no action was taken against him prior to the general election as the plaintiff did not inform the second defendant of his intention to contest the general elections and he had also admitted that he had given "personal reasons" as the reason for asking the no-pay leave to campaign. He also testified that the Headmaster of his school was fully aware of his intention to contest the 1978 general elections and that it was the Headmaster who instigated him to state "personal reasons" as the reasons for asking the no-pay leave. That may well be so but it must be remembered that the Headmaster was not an employee or an agent of the second defendant whose act bound the second defendant. Moreover, at the time when he contested the 1978 general elections, the plaintiff had not exercised his option to accept the second defendant's offer contained in Circular 1/78, AB 67, of a new salary scale under the Cabinet's Report on Salaries. He only exercised his option after the 1978 general elections. By exercising the option at AB 52, he agreed to be bound by the second defendant's circular, AB 67, and in paragraph 2.2 of AB 67, the plaintiff agreed that the terms and conditions of his service will be bound by AB 67 including the General Orders, the 1977 Regulations, Treasury directives and other circulars that may be issued from time to time. The plaintiff admitted that he was fully aware of the prohibition in Regulation 20(4) of the 1977 Regulations when he contested the by-election in December 1979 but as he considers the 1977 Regulations to be null and void, he took the stand that there was no necessity to comply with Regulation 20(4).

From the evidence, it is clear that as far as the plaintiff's participation in the 1969, 1974 and 1978 general elections is concerned, the omission of the second defendant to take any action against him was not due to its reluctance to do so as it had, until then, no power to take any disciplinary action against him. Warnings had been given against him as early as April 16, 1969 when he decided to contest the 1969 general election. On that occasion, his Headmaster had warned him that he must resign before he could contest any Federal or State seat. Then again after the 1978 general election, the second defendant requested for his resignation but he did not adhere to this request and the fact that no further action was taken by the second defendant after the 1978 general election could not possibly mean that the second defendant approved of the plaintiff's conduct. Thus the acts of omission complained of were not deliberate but that they were due to the incapacity of the second defendant who, being a creature of statute, can only act if empowered to do so. Thus, the second defendant wasted no time in dismissing the plaintiff when he contested the 1979 by-election as by that time, it had the necessary power under Regulation 20(4) of the 1977 Regulations to discipline him for having contravened that Regulation. To that extent estoppel cannot work against the defendants for having failed to take any action against the plaintiff for having contested in the 1969, 1974 and 1978 general elections.

The decision to dismiss the plaintiff was made by the second defendant at its 24th meeting on January 2, 1980 after considering the plaintiff's appeal at AB 55 made pursuant to the second defendant's letter to show cause at AB 53 – 54. AB 55 failed to satisfy the second defendant that he had exonerated himself. In it, the plaintiff had explained that he need only resign if he had been elected at the by-election and as this was not the case, there was no necessity for him to do so. His interpretation to Regulation 20(4) of the 1977 Regulations cannot be right as that regulation makes it mandatory for an employee of the second defendant seeking election to the House of Representatives or to a State Legislative Assembly to resign from his service before being nominated as a candidate for election. Having decided to dismiss him, the second defendant then followed the procedure laid down by Regulation 29(4) of the

1977 Regulations by seeking and obtaining the approval of the first defendant at AB 56 and AB 57 before dismissing the plaintiff with effect from June 1, 1980. The plaintiff now contends that this dismissal was made *mala fide* as he had been victimized for his political beliefs and convictions. He had testified that when he campaigned for the 1979 by-election, he had raised 2 sensitive issues: (1) the setting up of Merdeka University and (2) the first defendant's action in substituting Malay medium schools for English schools. Because of this, he alleges that the first defendant had induced the second defendant to dismiss him and he had learnt of this from two reliable persons whose identities he was not prepared to disclose as he had given them his solemn promise not to divulge their names so as to protect their positions and as a result, he was not calling them to testify on his behalf although they are alive and able to do so. As the evidence of *mala fide* and victimization amounts only to mere allegations which remained uncorroborated, I can only conclude that the failure of the plaintiff to call his so-called informants would only be detrimental to his case and I invoke the presumption under section 114(g) of the Evidence Act 1950 and hold that the plaintiff has failed to prove that his dismissal was made *mala fide*.

As the allegations of insubordination and misconducts have been pleaded by the defendants, I now consider whether there are evidence to support such allegations. A number of authorities were cited involving cases where the relationship of master and servant and employer and employee existed. In *Laws* v. *London Chronicle (Indicator Newspapers) Ltd.*[1] and *Pepper* v. *Webb*,[2] it was held that the wilful disobedience of a lawful and reasonable order is itself a ground for dismissal as it is settled law that an employee repudiates his contract of service if he wilfully disobeys the lawful and reasonable orders of his employer. Other cases like *Conell* v. *Giborne Times Co. Ltd.*[3] and *Adami* v. *Maison Deluxe Limited*[4] suggest that where the disobedience was a deliberate flouting by the servant that by itself justifies dismissal.

The order that the second defendant had tried to impose on the plaintiff was that he resign from his service as a teacher before involving himself in politics. Despite what had been testified by the plaintiff to the contrary, I consider that such an order is a lawful and reasonable one as a conflict of interest will naturally follow when a person elected to a political office continues to work as a teacher as well. The plaintiff had been warned about his conduct and he must know that what he was doing was morally wrong but all the same, he repeatedly continued to be politically active from 1969 to 1979, knowing too well that the defendants were powerless to discipline him. He also admitted that he was very much aware of the restriction imposed in the 1977 Regulations when he contested the 1979 by-election and in so doing, he had deliberately flouted the prohibition which entitled the second defendant acting as it did to dismiss him.

For reasons that I have given above, the plaintiff has failed to prove his case and I accordingly dismiss this action with costs.

Action dismissed.

Solicitors: *R. K. Nathan; Rithauddeen & Aziz.*